IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8928 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANT PRABHUBHAI PATEL & 7 - Petitioner(s)
Versus
DINESH MILLS LTD - Respondent(s)

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Appearance :

MR NR SHAHANI for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2 - 8.
MR KM PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 01/08/2006

ORAL JUDGMENT

1. Heard the learned advocate Mr. N.R. Shahani appearing on behalf of the petitioners and learned advocate Mr. K.M. Patel appearing on behalf of the

respondent.

2. In the present petition, petitioner workmen challenged the award passed by the Labour Court, Bharuch in Reference (L.C.B.) No. 170 of 1990 (Old No.340 of 1987) dated 10th May 1999. The Labour Court, Bharuch has denied the relief of reinstatement and back wages of interim period and granted the amount of compensation Rs.65,000/- in favour of 12 workmen whose names are mentioned as under :

(i)Shri Jayantkumar Prabhubhai Patel
(ii)Shri Thakor D. Patel
(iii)Shri Mahesh T. Patel
(iv)Shri Sanu C. Patel
(v)Shri Dinkar J. Pravasi
(vi)Shri Ahamadbhai I. Pandor
(vii)Shri Jayanti C. Prajapati
(viii)Shri R. K. Sharma
(ix)Shri Hare Ram Sing
(x)Shri Hitendrabhai Viththalbhai Desai
(xi)Shri Mohanbhai Bhikhabhai Patel
(xii)Shri Govindbhai Ramabhai Ahir

3. It is necessary to note that out of 12 workmen those who are concerned in Reference, only 8 workmen have filed this present petition.

4. Learned advocate Mr. Shahani has raised contentions that workmen has not admitted the allegation made by employer. The finding given by

Inquiry Officer is baseless and perverse. Pursis given by the workmen must have to be read in *toto*. Not a single workman accepted the guilt and it was a mass guilt theory adopted by the employer on the basis of going to strike by the workman. He relied upon the decision of Apex Court in case of ***Gujarat Steel Tubes Limited v. Gujarat Steel Tubes Mazdur Sabha*** reported in ***AIR 1980 SC 1896***, the Apex Court has held in para 111 that such theory has been negatived by the Apex Court. He also submitted that individually a case of termination is challenged by the workman then Labour Court should have to examine individually and therefore, Labour Court has committed gross error in not examining the matter individually in respect to each workmen as to whether the misconduct of going on strike has been committed by the workmen or not? He relied upon Para 7 in respect to one workman who was not remained present at the relevant date of incident because he was sick and he was not aware about the going on strike incident and the strike by the mass workmen. Therefore, he submitted that Labour Court has committed gross error and on that ground, the finding given by the Labour Court is vitiated. He also submitted that petitioner No.7 herein - Hareram Singh has not received Rs.65,000/- from the respondent. He pointed out from the award that at two places, the observations are made by the Labour Court that at present, the strike of the workmen is continue which adversely affected the production of the company. Therefore, on the basis of such observations made by

Labour Court taking into consideration which amounts to factually wrong on the basis gone into by Labour Court and considered against the workmen so on that ground, it vitiates the finding of the Labour Court.

5. Learned advocate Mr. K.M. Patel appearing on behalf of the respondent submitted that against the present respondents, in respect to the same misconduct of the same period by different group of workmen challenged the termination before the Labour Court, Bharcuh being Reference No. 169 of 1990 (Old No.334 of 1987) wherein identical order has been passed by the Labour Court awarding Rs.65,000/- in favour of each workman in lieu of reinstatement with continuity of service and back wages of interim period. This award also challenged by the workmen before this Court being Special Civil Application No.9410 of 2001. He submitted that this Court (Coram : Justice K.S. Jhaveri) decided the matter on 15.12.2005 and come to the conclusion that Labour Court has rightly passed an order granting compensation instead of granting reinstatement in such cases and it being a just and proper award passed by the Labour Court. For that, Labour Court having discretionary power and therefore, this Court is not interfered in this matter while exercising the power under Article 227 of the Constitution of India.

6. From the perusal of the award at Page 36, workers were went on strike with a view to pressurise their demand of pay revision. At that time, binding

settlement was continued between the parties and without giving any notice of termination of settlement. A strike has been taken place which ultimately, adversely affected the production of respondent. Therefore, Labour Court has rightly appreciated the aforesaid facts and come to the conclusion that strike declared by workmen was illegal and unreasonable. The strike was in support of workers those who were working at Baroda in company by workmen working at Ankleshwar, if such misconduct of going on strike during the continuation of the settlement which ultimately, adversely affected the production of respondent. This aspect has been also taken into account by the Labour Court. In such circumstances, while exercising the power whether Labour Court can pass appropriate order or put appropriate condition while granting the relief to the workmen. The Section 11-A of the Industrial Disputes Act, 1947 is quoted as under :

> ***"<u>Section 11-A</u> : Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. -*** Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge

or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this section, the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.***"***

7. Recently the Apex Court in case of ***The General Secretary, South Indian Cashew Factories Worker's Union v. The Managing Director, Kerala State Cashew Development Corporation Ltd. & Ors.*** Reported in ***2006 LLR 657 = (2006) 6 Scale page 44*** has considered the scope of Section 11-A of the Industrial Disputes Act, 1947. The relevant para 14, 15 and 16 are quoted as under :

"14. The only other ground found by the Labour Court against the enquiry officer is that he made some unnecessary observations and, therefore, he was biased. The plea that enquiry officer was biased was not raised during the enquiry or pleadings before the

Labour Court or in earlier or pleadings before the High Court. The bias of the enquiry officer has to be specifically pleaded and proved before the adjudicator. Such a plea was significantly absent before the Labour Court. We also note that the Labour Court itself found that the enquiry and its findings were not perverse. After such a finding, even if he has stated some unwarranted observations, it cannot be stated that report is biased. In Tata Engineering and Locomotive Co. Ltd. v. S.C. Prasad (1969) 3 SCC 372 this Court held that :

> “Industrial Tribunals, while considering the findings of domestic enquiries, must bear in mind that persons appointed to hold such enquiries are not lawyers nd that such enquiries are of a simple nature where technical rules as to evidence and procedure do not prevail. Such findings are not to be lightly brushed aside merely because the enquiry officers, while writing their reports, have mentioned facts which are not strictly borne out by the evidence before them.”

15. In this case for finding the employee guilty, the enquiry officer relied on the evidence adduced in the enquiry and Labour

Court itself found that the findings were not perverse. In such circumstances, the preliminary order of the Labour Court setting aside the enquiry on the ground that enquiry was conducted by an officer of the Management and he had made some observations in the enquiry report which were not warranted in the case is not a vitiating factor and these reasons are not sufficient to set asdie the enquiry.

16. The Labour Court had earlier held that the enquiry was properly held and there was no violation of the principles of natural justice and that the findings were not perverse. The vitiating facts found by the Labour Court against the enquiry are erroneous and are liable to be set aside. If enquiry is fair and proper, in the absence of any allegations of victimization or unfair labour practice, the Labour Court has no power to interfere with the punishment imposed. Section 11-A of the Act gives ample power to the Labour Court to re-appraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. Section 11-A of the Industrial Disputes Act is only applicable in the case of the dismissal or discharge of a workman as clearly mentioned in the section itself. Before the introduction of section

11-A in *Indian Iron and Steel Co. Ltd. v. Their Workmen, (1958) SCR 667* this Court held that the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the Management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice, etc. on the part of the management. There is no allegation of unfair labour practice, victimization etc. in this case. The powers of the Labour Court in the absence of Section 11-A is illustrated by this Court in *Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management, (1973) 1 SCC 813*. When enquiry was conducted fairly and properly, in the absence of any of the allegations of victimization or malafides or unfair labour practice, Labour Court has no power to interfere with the punishment imposed by the management. Since Section 11-A is not applicable, Labour Court has no power to reappraise the evidence to find out whether the findings of the enquiry officer are correct or not or whether the punishment imposed is adequate or not. Of course, Labour Court can interfere with the findings if the findings are perverse. But, here there is a clear finding that the findings are not perverse and principles of natural justice were complied with while conducting enquiry.“

8. In case of ***North Eastern Karnataka R.T. Corpn. v. Ashappa & Anr.*** *Reported in* **2006 AIR SCW 2644***,* the observation has held in Para 11 is as under :

> ***"11.*** The said principle of law has been reiterated in *A. Sudharkar v. Post Master General, Hyderabad and Anr. [2006(3) SCALE 524]* stating :
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> "Contention of Dr. Pillai relating to quantum of punishment cannot be accepted, having regard to the fact that temporary defalcation of any amount itself was sufficient for the disciplinary authority to impose the punishment of compulsory retirement upon the Appellant and in that view of the matter, the question that the third charge had been partially proved takes a back seat.
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> In *Hombe gowda Educational Trust and another v. State of Karnataka and otehrs [(2006) I SCC 430],* this Bench opined :
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> "The Tribunal's jurisdiction is akin to one under Section 11-A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction

to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.

This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be *inter alia* on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercises its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of punishment.

Assaulting a superior at a workplace amounts to an act of gross indiscipline. The Respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filty language and assault him with a chappal. Punishment of dismissal from service, therefore, cannot be said to eb wholly disproportionate so as shock one's conscience.

A person, when dismissed from services, is put to a great hardship but that would not mean that a grave misconduct should be unpunished. Although the doctrine of proportionality may be applicable in such

matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important. Keeping the aforementioned principles in view, we may hereinafter notice a few recent decisions of this Court.""

9. In case of ***Mahindra and Mahindra Limited v. Sunil Yeshwant Pandit and Shri P.S. Narkar, Presiding Officer, Labour Court, Nashik*** reported in ***2006-II LLJ 363 Bombay***, the relevant observation made in Para 22 is as under :

"22. If this were a criminal trial, certainly the 1st respondent would be acquitted inasmuch as nobody has been him lifting the drill bits nor has anybody proved that there were marks on the drill bits to show that they belongs to the company. However, in a domestic Tribunal, the standard to be applied is the standard of probability. If there is some relevant material on record and the domestic authority has accepted it and which material reasonably supports the conclusion that the employee is guilty, then merely because another view is possible, it is not permission fort he High Court to substitute its own view, as held in *Union of India v. Sardar bahadur (Supra)*. The view taken by the employer, if it is a probable

one cannot be terms to be perverse. It can be terms to be perverse only, if such a view is just not possible. In the facts of the present case, in our view, such a conclusion cannot be drawn. The findings of the Labour Court, therefore, rendered earlier in para 12 that the employer has not proved that the articles belonged to the Company is unsustainable. Similarly the finding of the Labour Court, on remand, in para 22 of the order to similar effect is unsustainable. The Labour Court has held on remand that there is no evidence to link the circumstance of possession of drill bits with the dishonest intention of the workman. The Court has acted almost as a criminal Court and held that there is nothing on record to suggest that he had lifted those drill bits, that they were found less in the department and, therefore, it could not be said that they belongs to the company. The intention is to be inferred from the conduct and the totality of the circumstances. If on these facts, the domestic Tribunal comes to the conclusion that respondent No.1 workman has committed theft, in our view, it cannot be termed to be a conclusion without any basis so as to call it perverse. The findings of the Labour Court, therefore, on remand, will have to be interfered, which we hereby do.“

10. In case of ***Madras Fertilizers Limited represented by its Executive Director (personnel and administration), Hanali, Chennai v. Presiding Officer, I Additional Labour Court, Chennai and Another*** reported in ***2006-II M.L.J. 3***, the relevant observation is as under :

> ***"The findings of the Labour Court are on evidence and this Court cannot substitute its own findings under Article 226 of the Constitution."***

11. In case of ***M/s. Maharashtra State Seeds Corpn. Ltd. v. Haridas & Anr.*** reported in ***2006 AIR SCW 1228***, the relevant observations made in para 20 and 21 are as under :

> ***"20. The 1st respondent held an office of trust. He distributed seeds to the farmers. He collected a huge amount from them. He not only defalcated a huge amount but also misappropriated some bags of seeds. It was in the aforementioned situation improper for the High Court to interfere with the quantum of punishment. It is now well settled that in a matter of disciplinary proceedings the High Court exercises a limited power. [See Govt. of A.P. & Ors. v. Mohad. Nasrullah Khan [JT 2006(2) SC 82], L.K. Verma v. H.M.T. Ltd. & Anr. [JT 2006(2) SC 99], Karnataka Bank Ltd. v. A.L. Mohan Rao [(2006) 1 SCC 63] and***

Hon'ble Gowda Educational Trust & Anr. v. Sate of Karnataka & Ors. [(2006) 1 SCC 430].

21. The grounds for judicial review are limited. In Damoh Panna Sagar Rural Regional Bank & Anr. v. Munna Lal Jain [(2005) 10 SCC 84] this Court held that when the High Court intends to interfere with the quantum of punishment on the ground that the same is shockingly disproportionate, it must record reasons for coming to such a conclusion."

12. In view of the aforesaid decisions of the Apex Court and various High Courts and considering the findings recorded by the Labour Court while considering the evidence led in departmental inquiry, according to my opinion, Labour Court has rightly come to the conclusion that finding recorded by the inquiry officer is legal and valid. Legality and validity of inquiry was not under challenge and therefore, in such circumstances, Labour Court has exercised the power under Section 11-A of the Industrial Disputes Act, 1947 to set aside the dismissal order and giving such other relief to the workmen including the award of any lessor punishment in lieu of discharge or dismissal as the circumstances of the case may require. The Labour Court, therefore, rightly granted other relief instead of reinstatement with back wages being a compensation about service rendered by the workmen and considering a mass misconduct committed by the

workmen. Therefore, when finding given by Labour Court based on evidence, this Court has very limited jurisdiction to interfere this such award.

13. I have considered the submissions made by both the learned advocates appearing on behalf of the respective parties and I have also perused the award passed by the Labour Court, Bharuch. The respondent – employer has taken action in respect the misconduct committed by the workmen. According to respondent, charge-sheet was served and after completion of departmental inquiry while giving reasonable opportunity to the petitioner – workmen, a finding recorded by the Inquiry Officer holding the guilty to these workmen and then issue show cause notice and ultimately, dismissal order dated 5th November 1986 was passed by the respondent. Before the Labour Court, pursis was filed by workmen not to challenge the legality and validity of departmental inquiry, however, in pursis, it was made clear that allegations which were made against the workmen are not accepted by any of the workman. But once, the legality and validity of departmental inquiry is not challenged by workmen then next question has been examined by the Labour Court whether finding given by the inquiry officer is based on legal evidence or not? The Labour Court has considered this aspect and examined the evidence which were led in departmental inquiry and ultimately, come to the conclusion that finding recorded by the inquiry officer is based upon legal evidence and it is not a perverse and baseless.

It is necessary to not one important aspect that advocate, who was appearing on behalf of the workmen, has made submission before the Labour Court at Page 34 – Para 2 internal page 21. Wherein it is recorded by the Labour Court that learned advocate on behalf of the workmen in his argument stated that punishment of dismissal imposed by the employer in respect to the gravity of misconduct is harsh, unjustified and disproportionate. Meaning thereby, that Labour Court has exercised the power under Section 11-A of the Industrial Disputes Act, 1947. The Labour Court on two occasions had discussed that finding recorded by the inquiry officer is legal and valid and not baseless and perverse. On the basis of material on record and after considering the evidence led in departmental inquiry, Labour Court has come to the conclusion that misconduct of strike committed by the workmen is illegal and unreasonable, therefore, while coming to this conclusion, the Labour Court has also appreciated the recent position of 1999 wherein considering the argument of the respondent's advocate that even at present also, the strike is going on and work of the company is suffered if it is taken into account by the Labour Court while keeping in mind, the earlier strike, there is nothing wrong to consider the present condition of the company whether it is going well or not? It has not adversely affected or it cannot consider to be a wrong approach of the Labour Court and on that ground, finding given by the Labour Court cannot be vitiated. Therefore, submission made by learned advocate Mr. Shahani

cannot be accepted that merely mentioning the facts of the present status of the company wherein strike was going on, it has not be adversely affected any way to the right of the petitioners.

14. After considering the decision as referred above inspect to power and jurisdiction under the provisions of Section 11-A of the Industrial Disputes Act, 1947. The Labour Court in serious misconduct cannot exercised such power for passing alternate punishment or to substitute the lessor punishment. In such misconduct which found to be proved on record interference by Labour Court under Section 11-A of the I.D. Act, 1947 held to be unwarranted, however, in such cases instead of substitute lessor punishment, it is open for the Labour Court to grant some reasonable compensation in lieu of reinstatement and back wages and substitute punishment. Therefore, Labour Court has rightly considered the record and proceedings of inquiry officer and come to the conclusion that in such a serious misconduct, relief of reinstatement with back wages cannot be granted to the petitioner. The Labour Court has power when reinstatement is not possible because of the reason that financial difficulties of the institution, post in question is abolished or not available strain relation with employer, loss of confidence, daily wager, temporary employee, then Labour Court can grant other relief of reasonable compensation while exercising the power under Section 11-A of the Industrial Disputes Act, 1947. In this case, after

considering the strain relation with employer because of serious misconduct of strike which proved against the petitioner, therefore, Labour Court has rightly granted compensation to each petitioner. According to my opinion, the amount of compensation is also just, reasonable and proper. For that also, Labour Court has not committed any error which requires interference by this Court.

15. The contentions raised by learned advocate Mr.Shahani cannot be accepted in light of the pursis given by the workmen and finding considered to be legal and valid by Labour Court. The Labour Court has examined the case of each employee individually, but, because of mass misconduct, naturally, the evidence led in departmental inquiry was to be common and explanation of such petitioners was also common. So, it cannot consider to be proper that Labour Court has not examined the matter individually in respect to allegation and departmental inquiry. The contentions of learned advocate Mr. Shahani that workman has not accepted the guilt cannot be accepted in light of the facts that before the inquiry officer, the guilt was proved beyond reasonable doubt as finding recorded by the inquiry officer based on legal evidence. On behalf of the petitioner before the Labour Court, it was not demonstrated that how the finding given by inquiry officer is baseless and perverse. It is also necessary to note the submission of learned advocate appearing on behalf of the petitioners before the Labour Court has requested to the Labour

Court to exercise the power under Section 11-A of the Industrial Disputes Act, 1947. It itself suggests that petitioners have accepted the guilt and findings given by inquiry officer is legal and valid otherwise, question of exercising the power under Section 11-A does not arise. The Labour Court can exercise the power if Labour Court is satisfied that punishment looking to the gravity of misconduct is harsh and unjustified. Meaning thereby that misconduct is deemed to be proved or committed by workmen then Labour Court can exercise such powers. Therefore, the submissions made by learned advocate Mr. Shahani cannot be accepted in light of the facts which were on record before the Labour Court.

16. It is necessary to note that strike by lawyers or by workmen both are have been deprecated by the Apex Court and it has to be considered a serious misconduct which adversely affected the production of the company and also adversely affected the financial condition of the company having serious financial repercussion of the company in market, therefore, Labour Court has rightly considered to be a serious misconduct committed by the workmen found to be proved on record and finding recorded by the inquiry officer is to be correct, legal and valid. Therefore, Labour Court has examined the matter under Section 11-A of the Industrial Disputes Act, 1947 and Labour Court has satisfied to the extent that instead of granting the order of reinstatement with back wages, such workman should not give the relief of

reinstatement or back wages, but, some compensation can be considered to be just and proper. Therefore, Labour Court has rightly exercised the discretionary power with cogent reason and considering the record, as it is and in such circumstances, even according to opinion of this Court also, relief of reinstatement should not have to be granted which otherwise company will face the same music from the workmen and therefore, according to my opinion, Labour Court has rightly passed the award while exercising the discretionary power. For that, Labour Court has not committed any error which requires interference by this Court under Article 227 of the Constitution of India. The view taken by this Court in identical matter by order dated 15th December 2005 in Special Civil Application No.9410 of 2001 is also taken into account by this Court and I have also considered the said decision while passing this order also. Therefore, this Court having very limited jurisdiction to interfere under Article 227 of the Constitution of India.

1. This aspect has been considered by the apex court in ***Laxmikant Revchand Bhojwani and another versus Pratapsing Mohansingh Pardeshi****, reported in* ***(1995) 6 SCC 576****. Relevant observations made by the apex court in para 9 of the said judgment are therefore reproduced as under:*

“The High Court under Article 227 cannot

assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes. "

2. In ***Ouseph Mathai and Others versus M. Abdul Khadir****, reported in* ***(2002) 1 SCC 319****, the apex court observed as under in para 4 and 5 :*

"4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article cast a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law

conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In Waryam Singh v. Amarnath (1954 SCR 565) this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bose v. Commr. of Hills Division (1958 SCR 1240). In Bhahutmal Raichand Oswal v. Laxmibai R. Tarta (AIR 1975 SC 1297) this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the Legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R v. Northumber Compensation Appeal Tribunal, Ex parte Shaw (1952 (1) All ER 122, 128) this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Gurnam held : (SCC p.460 para 20)

"20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see Trimbak Gangadhar Teland 1977 (2) SCC 437). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of

factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

*3. In **Roshan Deen versus Preeti Lal**, reported in **(2002) 1 SCC 100**, the apex court observed as under in paragraph 12:*

> *"We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of UP v. District Judge, Unnao [(1984) 2 SCC 673: AIR 1984 SC 1401]). The very purpose of such constitutional powers being conferred on the High Court is that no man should be subjected to injustice by violating the law. The lookout of the High Court is,*

therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-produce of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law."

17. In view of the above observations, there is no substance in the present petition. Accordingly, present petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

18. It is open for the petitioner No.7 herein – Hareram Singh to approach the respondent company, if, so far, the amount of Rs.65,000/- is not received by him from the respondent, then it is directed to the respondent to scrutinize the facts from the record of the company and if respondent finds out the fact that amount of Rs.65,000/- has not been paid to petitioner No.7 herein – Hareram Singh, then it is directed to the respondent company to pay Rs.65,000/- to petitioner No.7 herein – Hareram Singh within a period of one month from the date of receiving the copy of the said order.

[H.K. RATHOD, J.]

#Dave